

**INDIANA BOARD OF TAX REVIEW**  
**Small Claims**  
**Final Determination**  
**Findings and Conclusions**

**Petition:** 45-003-13-1-5-00144-16  
**Petitioner:** James Nowacki  
**Respondent:** Lake County Assessor  
**Parcel:** 45-08-18-452-018.000-003  
**Assessment Year:** 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

**Procedural History**

1. Petitioner initiated the 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on February 26, 2018. Neither the ALJ nor the Board inspected the property.
4. Petitioner James Nowacki was sworn and testified. Robert W. Metz and Gordona Bauhan, Lake County Appeal Officers, were sworn as witnesses for Respondent.

**Facts**

5. The subject property is a vacant residential lot located at 3938 West 28<sup>th</sup> Avenue (Approx.) in Gary.
6. The 2013 assessed value is \$3,400.
7. Petitioner requested an assessed value of \$2,500.

**Record**

8. The official record contains the following:

a. A digital recording of the hearing

b. Exhibits:

Petitioner Exhibit 1: GIS map,  
Petitioner Exhibit 2: Property record card (“PRC”),

Respondent Exhibit 1: PRC,  
Respondent Exhibit 2: GIS map,

Board Exhibit A: Form 131 petition,  
Board Exhibit B: Notice of Hearing,  
Board Exhibit C: Hearing sign-in sheet,

c. These Findings and Conclusions.

### **Burden**

9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that an assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value did not change from 2012 to 2013. Therefore, Petitioner has the burden of proof.

### **Summary of Contentions**

14. Petitioner's case:
  - a. Petitioner contends this property is adjacent to a previously appealed lot at 3942 West 28<sup>th</sup> Avenue. It is in the same blighted area where property owners have abandoned their properties. The improvements that are in the neighborhood are vacant and have collapsed into ruins. This area is well-known as a crime-ridden area and is subject to much external obsolescence. *Nowacki testimony.*
  - b. Petitioner contends the subject land is low-lying, which means it is under water during rains. It is identified as having gas and utilities available. But according to Petitioner gas and utilities are not actually available at this site. The neighborhood is identified as "static" which means the value is not going up or down. However, Petitioner contends the neighborhood is in fact declining as Respondent's own records indicate. Petitioner contends that if the PRC properly identified the property's characteristics, it would have a tremendous effect on the land value Respondent applied to the property. *Nowacki testimony; Pet'r Ex. 2.*
  - c. Petitioner acquired the property in 2009 for \$120. He testified that was the actual market value for the property. Petitioner requests a value of \$2,500. That value would be 20 times more than he paid for it. *Nowacki testimony.*
  - d. Petitioner contends that when he filed the appeal in 2013 the assessed value was \$3,400. He claims there is no empirical evidence to support that value. Now Respondent has reduced the value to \$2,800. That value is close to the assessed value Petitioner proposed five years ago. *Nowacki testimony.*
  - e. Petitioner contends Respondent's PRC shows the assessed value went from \$3,300 to \$3,400 where it stayed for a few years. It then went down to \$3,300. Now it is down to \$2,800. He claims property values should not jump around from year to year, these properties have been going down for a long time, and Respondent's numbers do not reflect that fact. *Nowacki testimony; Resp't Ex. 1.*
15. Respondent's case:
  - a. Respondent contends Petitioner did not present any evidence to show that the assessed value is incorrect. *Bauhan testimony.*

## ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance (“DLGF”) has defined as the property’s market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property’s market value-in-use, a party may offer evidence that is consistent with the DLGF’s definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice (“USPAP”) will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties’ assessments to determine an appealed property’s market value-in-use).
  - b. Regardless of the method used to prove a property’s true tax value, a party must explain how its evidence relates to the subject property’s market value-in-use as of the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the assessment date at issue in this appeal was March 1, 2013. Ind. Code § 6-1.1-4-4.5(f); 50 IAC 27-5-2(c).
  - c. Petitioner presented no probative evidence to support the assessed value that he claimed for the subject property. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm’rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
  - d. Petitioner contends the property suffers from external obsolescence. External obsolescence is caused by an influence that has a negative influence on the property’s value. *Clark v. Dep’t of Local Gov’t Fin.*, 77 N.E.2d 1277 (Ind. Tax Ct. 2002). To receive an adjustment for obsolescence, a property owner must identify the causes of such obsolescence and quantify the amount of obsolescence it believes should be applied. *Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230, 1241 (Ind. Tax Ct. 1998). While Petitioner identified some items that might be the cause of external obsolescence, he failed to quantify the amount of such obsolescence.
  - e. Petitioner contends there are numerous errors on the PRC regarding the characteristics of the property. However, he did not show how any changes to those characteristics would affect the market value-in-use of the property. Simply contesting the methodology is insufficient to make a prima facie case for an error in

the assessment. *Eckerling v. Wayne Co. Ass'r*, 841 N.E.2d at 674, 677 (Ind. Tax Ct. 2006). To successfully make a case, the Petitioner needed to show the assessment does not accurately reflect the subject property's market value-in-use. *Id.* See also *P/A Builders 7 Developers, LLC v. Jennings Co. Ass'r*, 842 N.E.2d 899,900 (Ind. Tax Ct. 2006) (explaining that the focus is not on the methodology used by the assessor but instead on determining what the correct value actually is).

- f. Petitioner failed to make a prima facie case for changing the assessment. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

### CONCLUSION

- 17. Petitioner failed to establish a prima facie case that the 2013 assessed value is incorrect. Consequently, the Board finds for Respondent.

### FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the 2013 value should not be changed.

ISSUED: May 3, 2018

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Chairman, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

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Commissioner, Indiana Board of Tax Review

#### - APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.